

DEFENDANT'S SUPPLEMENTAL PROPOSED JURY INSTRUCTION NO. 1

If and only if you find the defendant not guilty of knowingly and intentionally possessing, with intent to distribute, heroin within 1000 feet of Kailua Elementary School, or you are unable to reach a unanimous verdict as to this offense, then you must determine whether the defendant is guilty or not guilty of the included offense of distribution of heroin.

A person commits the offense of distribution of heroin if that person knowingly or intentionally distributes heroin. There are two material elements of this offense, each of which the government must prove beyond a reasonable doubt.

These two elements are:

1. That on or about May 29, 2005, in the District of Hawaii, Kevin Patrick Cash distributed heroin.
2. That the defendant did so knowingly and intentionally.

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U.S. v. Horsley, 56 F.3d 50 (11<sup>th</sup> Cir. 1995).